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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

LYDIA LLANES BERNABE dba SUN  
RISE, LLC; dba L & M RESIDENTIAL; fdba  
BOARD AND GO SERVICES, INC.; dba  
SOUTHERN HILLS BOARD & CARE  
HOME LLC,  
and

MANUEL BALLANGCA BERNABE dba  
SUN RISE, LLC; dba L & M  
RESIDENTIAL; fdba BOARD AND GO  
SERVICES, INC.; dba SOUTHERN HILLS  
BOARD & CARE HOME, LLC,

Debtors.

CASE NO.: 09-13257-mkn

Chapter 11

Hearing Date: November 10, 2009

Hearing Time: 2:00 P.M.

Courtroom: 2

**MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF  
SELECT PORTFOLIO SERVICES and SPECIALIZED LOAN SERVICING, LLC  
PURSUANT TO 11 U.S.C. § 506 (a)**

TO: THE HONORABLE CHIEF BANKRUPTCY JUDGE MIKE K. NAKAGAWA:

LYDIA LLANES BERNABE and MANUEL BALLANGCA BERNABE (hereinafter  
referred to as "Debtors"), by and through their attorneys COLEMAN LAW ASSOCIATES, A  
PROFESSIONAL LAW CORPORATION, move this Court pursuant to 11 U.S.C. §506(a) and  
Bankruptcy Rules 3012 and 9014 of the Federal Rules of Bankruptcy Procedure to value collateral  
securing certain residential loans and re-classify portions of lenders' claims as unsecured, and, in

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support of the Motion represent:

**STATEMENT OF FACTS**

1. Debtors filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code, Case Number 09-13257-mkn on March 10, 2009.

2. On the date of filing said petition, Debtors owned, among other assets, an investment property located at 8605 Copper Falls Avenue, Las Vegas, NV 89129 (hereinafter referred to as "**Subject Property**").

3. On the petition date, the estimated value of the **Subject Property** was \$250,000.00, however, the appraised value is \$180,000.00, as set forth on "**Exhibit A**", attached herein and incorporated for reference.

4. At the time of filing the petition, the **Subject Property** was subject to the following liens:

a. SELECT PORTFOLIO SERVICES, Account No. **xxxxx7026**, (First Mortgage and/or First Deed of Trust): THREE HUNDRED SIXTY THOUSAND DOLLARS AND ZERO CENTS (\$360,000.00) as set forth in Proof of Claim No.5, attached herein as "**Exhibit B**" and incorporated for reference.

b. SPECIALIZED LOAN SERVICING, LLC, Account No. **xxxxxx2807**, (Second Mortgage and/or Second Deed of Trust): NINETY THOUSAND, ONE HUNDRED TWENTY DOLLARS AND NINETY-SIX CENTS (\$90,120.96).

**MEMORANDUM OF POINTS AND AUTHORITIES**

5. Section 506(a)(1) of the Bankruptcy Code provides that a Chapter 11 Debtor may bifurcate a secured lender's claim into an allowed secured claim and an allowed unsecured claim based upon the actual value of the property securing such lender's lien.

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the

value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506 (a)(1)

6. The Supreme Court has recognized that Section 506 of the Bankruptcy Code defines the amount of the secured creditor's allowed secured claim and the conditions of his receiving post-petition interest. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371 (1988). In United Sav. Ass'n of Texas, the Supreme Court interpreting Section 506(a) of the Bankruptcy Code found that:

In subsection (a) of this provision the creditor's "interest in property" obviously means his security interest without taking into account of his right to immediate possession of the collateral on default. If the latter were included, the "value of such creditor's interest" would increase, and the proportions of the claim that are secured and unsecured would alter, as the stay continues-since the value of the entitlement to use the collateral from the date of bankruptcy would rise with the passage of time. No one suggests this was intended. The phrase "value of such creditor's interest" in § 506(a) means "the value of the collateral."

See id. (emphasis added) (quoting H.R. Rep. No. 95-595, pp. 181, 356 (1977)).

7. The Ninth Circuit agrees with this interpretation of section 506 of the Bankruptcy Code. In re Maldonado, 46 B.R. 497, 499 (9<sup>th</sup> Cir. BAP 1984) (interpreting section 506(a), "a claim is a secured claim to the extent of the value of [the] creditor's interests in the estate's interest in the property. The entire claim is not a secured claim. The claim is secured only to the extent of the value of the secured interest.")

8. In addition, this Bankruptcy Court has found that "an 'allowed secured claim' is a determination generally made under 11 U.S.C. § 506." In re BBT, 11 B.R. 224, 229 (Bankr.D. Nev. 1981). The Bankruptcy Court further stated that, with respect to a claim secured by a lien on property of the estate, "to the extent that the value of the property is less than the amount of the total allowed claim, **the claim is unsecured.**" Id. (emphasis added). Thus, pursuant to the law of this Circuit, the amount of the allowed secured claim cannot exceed the market value of the property and

1 the remainder of the claim must be treated as an allowed unsecured claim for the purposes of the  
2 plan.

3 9. Moreover, the Ninth Circuit Court of Appeals has also found that a wholly unsecured  
4 lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to section  
5 506 (a) of the Bankruptcy Code. See In re Zimmer, 313 F.3d 1220 (9<sup>th</sup> Cir.2002),  
6 Specifically, the Court held:

7 Section 506(a) divides creditors' claims into 'secured claims'  
8 and 'unsecured claims.' Although the conventional  
9 interpretation of "secured" might include any claim in which  
10 the creditor has a security interest in the debtor's property,  
11 §506(a) makes clear that the status of a claim depends on the  
12 valuation of the property:

13 'An allowed claim of a creditor secured by a lien on property in  
14 which the estate has an interest ... is a secured claim to the  
15 extent of the value of such creditor's interest in the estate's  
16 interest in such property ... and is an unsecured claim to the  
17 extent that the value of such creditor's interest ... is less than the  
18 amount of such allowed claim.'

19 11 U.S.C. 506(a). To put it more simply, a claim such as a  
20 mortgage is not a 'secured claim' to the extent that it exceeds  
21 the value of the property that secures it. Under the Bankruptcy  
22 Code, 'secured claim' is thus a term of art; not every claim that  
23 is secured by a lien on a property will be considered a 'secured  
24 claim.' Here, it is plain that PSB Lending's claim for the  
25 repayment of its loan is an unsecured claim, because its deed of  
26 trust is junior to the first deed of trust, and the value of the loan  
27 secured by the first deed of trust is greater than the value of the  
28 house.

17 In re Zimmer, 313 F.3d at 1222-23.

18 10. Bankruptcy law is clear; absent sufficient equity in the Properties, the mortgage  
19 lenders' claims, which are only partially secured (excluding Debtor's Primary Residence) should be  
20 bifurcated into secured and unsecured claims. The second mortgage lenders, who are wholly  
21 unsecured, should receive only their pro rata distribution with other general unsecured creditors  
22 through the Debtor's Chapter 11 plan.

23 11. Finally, the filing of a motion rather than an adversary proceeding to achieve the  
24 relief requested herein is appropriate in this Court. See In re Bonsignori, Case No. BKS-08-11830-  
25 LBR (D. Nev. June 25, 2008) (approving the stripping off of an unsecured lien by motion); See also

In re Williams, 166 B.R.615 (Bankr.E.D.Va.1994); In re Fuller, 255 B.R. 300 (Bankr.W.D.Mich.2000); In re Hoskins, 262 B.R. 693 (Bankr.E.D.Mich.2001); In re King, 290 B.R. 641 (Bankr.C.D.Ill.2003); In re Millspaugh, 302 B.R. 90 (Bankr.D.Idaho 2003); Dickey v. Ben. Fin. (In re Dickey) 293 B.R. 360 (Bankr.M.D.Pa.2003); In re Hill, 304 B.R. 800 (Bankr.S.D. Ohio 2003); In re Sadala 294 B.R. 180 (Bankr.M.D.Fla.2003); In re Fisher, 289 B.R. 544 (Bankr.W.D.N.Y.2003); In re Robert, 313 B.R. 545 (Bankr.N.D.N.Y.2004); In re Fuller, 225 B.R. 300 (Bankr. W.D. Mich. 2000); and In re Bennett, 312 B.R. 843 (Bankr.W.D.Ky.2004). Instead, Debtor may bring the instant motion.

### CONCLUSION

12. Accordingly, because the first mortgage on the **Subject Property** is under secured, SELECT PORTFOLIO SERVICES' claim should be bifurcated into secured and unsecured claims based on the market value of the Property as shown in the appraisal as set forth in "**Exhibit A**".

13. Because the second mortgage on the **Subject Property** is wholly unsecured in that there is no equity above the first mortgage, SPECIALIZED LOAN SERVICING, LLC's unsecured claim should be reclassified as a general unsecured claim to be treated pro rata with similar unsecured creditors and SPECIALIZED LOAN SERVICING, LLC should be stripped of its secured rights under 11 U.S.C. 506 (a) since no maintainable security interest in the subject Property exists.

**WHEREFORE**, Debtor prays that this Court:

1. Value the **Subject Property** in accordance with the appraisal attached hereto;
2. Bifurcate SELECT PORTFOLIO SERVICES' claim into secured and unsecured claims in the respective amounts of ONE HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$180,000.00) as a secured claim and ONE HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$180,000.00) as an unsecured claim;
3. Order the monthly Principal and Interest payments due to SELECT PORTFOLIO SERVICES on the reduced value of collateral security in the amount of ONE HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$180,000.00) as a secured claim, be adjusted and lowered accordingly;

1           4.       Avoid, “strip off”, and extinguish SPECIALIZED LOAN SERVICING, LLC’s wholly  
2 unsecured second lien pursuant to section 506(a) of the Bankruptcy Code;

3           5.       Reclassify SPECIALIZED LOAN SERVICING LLC’s claim as a general unsecured  
4 claim to be paid pro rata with other general unsecured creditors through the Debtor’s Chapter 11 plan;

5           6.       Such other relief the Court deems just and proper.

6 DATED this 9<sup>th</sup> day of October, 2009.

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COLEMAN LAW ASSOCIATES, APLC

By: /s/ Elizabeth DeFlyer, Esq.  
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**LIST OF EXHIBITS**

**EXHIBIT A:**

**RESIDENTIAL APPRAISAL REPORT**

8605 Copper Falls Avenue  
Las Vegas, NV 89129

**EXHIBIT B:**

**PROOF OF CLAIM NO. 5**

SELECT PORTFOLIO SERVICES

**EXHIBIT C:**

**PROOF OF CLAIM NO. 2**

SPECIALIZED LOAN SERVICING, LLC